

FILED
January 11, 2006
U.S. Bankruptcy
Court
Santa Rosa, CA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

ROBERT and SANDRA GREENBURY,

No. 04-10573

Debtor(s).

Memorandum on Objection to Exemptions

In their Chapter 7 schedules, debtors Robert and Sandra Greenbury stated that they owned \$500 in jewelry. Under questioning at the 341 hearing, they stated that they owned a ring and a necklace worth \$12,000. Soon after the 341 hearing, they amended their schedules to reflect this jewelry and claimed it as exempt. The trustee has objected, and seeks turnover of the jewelry.

A claim of exemption may be disallowed if the exemption has been claimed in bad faith. Bad faith may be found where the debtor omitted the asset from the schedules with intent to conceal it. See *In re Arnold*, 252 B.R. 778, 784 (9th Cir. BAP 2000). However, the court finds no bad faith in this case.

The evidence is clear that the debtors told their attorney about the jewelry. The attorney, Edmund Dechant, returned to his office after the 341 hearing, reviewed his records, and saw that the debtors had included \$12,000 in jewelry on their worksheet from which he prepared their schedules. He then prepared and filed the amended schedules now at issue. The debtors intended at all times to be honest and did not notice the lower figure for jewelry on their schedules, which are fairly extensive due to business assets.

Where an asset has been omitted from the schedules by mistake of counsel to whom the debtor

1 has disclosed all the relevant facts, the debtors cannot be charged with knowingly making a false oath. 6
2 **Collier on Bankruptcy** (15th Ed. Rev.), ¶ 727.04[2], p. 727-42; *In re Adeeb*, 787 F.2d 1339, 1343 (9th
3 Cir, 1986). The mistake in this case was entirely that of Dechant, and the debtors cannot be seriously
4 faulted for failing to catch it when they signed their schedules. Accordingly, there is no bad faith
5 involved in the amended claim of exemption.

6 For the foregoing reasons, the trustee's objection to the amended claim of exemption will be
7 overruled and the motion for turnover denied. Counsel for the debtors shall submit an appropriate form
8 of order forthwith.

9 Dated: July 12, 2004

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12 Alan Jaroslovsky
13 U.S. Bankruptcy Judge
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